

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221878

DATE: March 21, 1986

MATTER OF: The W.H. Smith Hardware Company

DIGEST:

Low bidder's failure to complete standard place of performance clause constitutes a minor informality which can be waived because it involves the bidder's responsibility, not responsiveness, and therefore can be completed any time up to the time of award.

The W.H. Smith Hardware Company (W.H. Smith) protests the potential award to J.G.B. Enterprises, Inc. (J.G.B.), under invitation for bids (IFB) No. DLA700-85-B-1396 issued by the Defense Construction Supply Center (DCSC) for hose assemblies. W.H. Smith alleges that J.G.B.'s bid was non-responsive because it did not complete clause K30, the IFB's "place of Performance" clause.

We dismiss the protest pursuant to §21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because it is clear on the face of the protest that it is without merit.

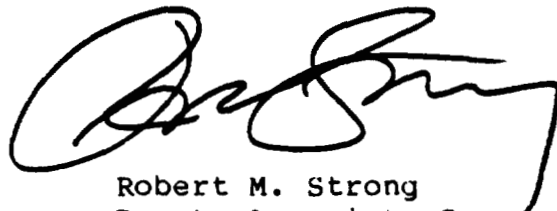
Clause K30 required the bidder to indicate whether it intended to use any plants or facilities located at addresses other than the address indicated in its bid and, if it did, to list those facilities. W.H. Smith argues that the contracting officer could not properly evaluate J.G.B.'s bid and that the integrity of the bidding process will be compromised if it is permitted to complete the clause now because J.G.B. possibly could examine the sources of supply of the other bidders in order to shop for better prices.

We have found that the failure to complete the place of performance clause can be waived as a minor informality, unless the government has a material need to have performance take place at a certain location, because the requirement usually relates to the bidder's responsibility. See Industrial Design Laboratories, Inc., B-216639, Nov. 13, 1984, 84-2 C.P.D. ¶ 523. Therefore, information with regard to the place of performance can be furnished up to the time of award. Id. Since W.H. Smith did not allege that the IFB required performance to take place at a specific location, there is no basis to find that J.G.B.'s bid was nonresponsive.

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W.H. Smith cites our decision in The W.H. Smith Hardware Company, B-221087, Dec. 4, 1985, 85-2 C.P.D. ¶ 627, to support its protest. However, that decision is not applicable because, there, the bidder failed to certify that all supplies to be furnished would be manufactured or produced by a small business. While the bidder had listed its own plant as the place of manufacture, we found that a small business bidder which represented itself as a manufacturer under the Walsh-Healey Act was not precluded from subcontracting with a large business. Therefore, there was no binding obligation to furnish supplies manufactured or produced by a small business, which is not the issue here.

Finally, W.H. Smith contends that J.G.B. is an "assembler" rather than a "manufacturer" under the Walsh-Healey Act, 41 U.S.C. § 35-45 (1982). Following a preaward survey, DCSC determined J.G.B. to be a manufacturer. Our Office does not consider the legal status of a firm under the Walsh-Healey Act. The contracting agency determines the firm's status, subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor. W.H. Compton Shear Co., B-208626.2, Oct. 3, 1983, 83-2 C.P.D. ¶ 404. To the extent W.H. Smith is arguing that as an assembler J.G.B. was required to list suppliers in K30, we know of no such requirement.



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